

1 THE HONORABLE JOHN C. COUGHENOUR  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 LARENA HATLEY,

11 Plaintiff,

12 v.

13 JOYCE L. MULLAN,

14 Defendant.

CASE NO. C21-0820-JCC

ORDER

15 This matter comes before the Court on Plaintiff's motion for reconsideration (Dkt. No.  
16 65). Plaintiff asks the Court to reconsider its order granting Defendant leave to amend its  
17 Answer. (*Id.*; *see* Dkt. Nos. 57, 61.) Plaintiff contends the Court misinterpreted the import of its  
18 prior order striking the "remaining case schedule" in this matter. (Dkt. No. 65 at 3 (quoting Dkt.  
19 No. 52 at 1).) And Plaintiff asserts that, on this basis, the Court committed manifest error by  
20 failing to consider its argument that Defendant did not show the good cause required under Rule  
21 16(b) to modify the scheduling order to allow her to amend her Answer to present a failure to  
22 mitigate defense. (*See id.*)

23 To the extent a Rule 16(b)(4) modification is required, and the Court is not opining that it  
24 is, the Court FINDS good cause for the modification sought. This is because, while the failure to  
25 raise an affirmative defense would normally constitute a waiver of that defense, it can be cured  
26 through inclusion of the defense in the pretrial order. *See 999 v. C.I.T. Corp.*, 776 F.2d 866, 870

1 n.2 (9th Cir. 1985) (noting that including “the issue of mitigation” in a pretrial order “has the  
2 effect of amending the pleadings.”); *see also Accent Films, B.V. v. Universal City Studios, Inc.*,  
3 24 F.3d 244 (9th Cir. 1994) (affirming a district court decision to not waive an un-pleaded  
4 mitigation defense). And Defendant has proposed doing just that. (See Dkt. No. 53 at 2.)

5 For this reason, Plaintiff fails to demonstrate manifest error, *see* LCR 7(h)(1), and her  
6 motion for reconsideration (Dkt. No. 65) is DENIED.

7  
8 DATED this 18th day of April 2023.

9  
10   
11  
12 John C. Coughenour  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

10  
11 John C. Coughenour  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26